



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Michael Kreloff, Esq.
Law Offices of Michael Kreloff
1926 Waukegan Road, Suite 310
Glenview, Illinois 60025

OCT 24 2016

RE: MUR 6948
Nancy Rotering for Congress and
Michael Kreloff in his official
capacity as treasurer
Nancy Rotering

Dear Mr. Kreloff:

On July 13, 2015, the Federal Election Commission notified Nancy Rotering for Congress and you in your official capacity as treasurer ("Committee") and Nancy Rotering of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On October 18, 2016, the Commission found, on the basis of the information in the complaint, and information provided by you that there is no reason to believe that the Committee violated 52 U.S.C. §§ 30103(a), 30104(a) or 30104(b). The Commission also found no reason to believe that Nancy Rotering violated 52 U.S.C. § 30102(e)(1). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Nancy Rotering
6 Nancy Rotering for Congress
7 and Michael Kreloff in his
8 official capacity as treasurer
9

MUR 6948

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 alleging that Nancy Rotering violated the Federal Election Campaign Act of 1971, as amended
13 (the "Act"), by failing to register as a candidate with the Commission until March 2015 even
14 though she became a candidate for Congress in late January 2015 by receiving campaign
15 contributions in excess of \$5,000. Rotering and her campaign committee, Nancy Rotering for
16 Congress ("Committee"), assert that she complied with the Commission's "testing the waters"
17 regulations, she only became a candidate for Congress in early March 2015, and she timely filed
18 her Statement of Candidacy. Because the information supports the Respondents' claims, the
19 Commission finds that there is no reason to believe that Nancy Rotering violated 52 U.S.C.
20 § 30102(e)(1). The Commission also finds that there is no reason to believe that the Committee
21 violated 52 U.S.C. §§ 30103(a), 30104(a) or 30104(b).

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Factual Summary**

24 Nancy Rotering is a candidate for United States Congress from the Tenth Congressional
25 District of Illinois in 2016. She filed her Statement of Candidacy on March 17, 2015,
26 designating the Committee as her principal campaign committee, and the Committee filed its
27 Statement of Organization that same day. The Committee's initial disclosure report, the 2015

1 April Quarterly, disclosed a \$25,000 loan from the candidate on January 15 and itemized
2 contributions from other persons starting on January 23.¹

3 The Complaint alleges that Rotering raised over \$5,000 by January 29, 2015, and thereby
4 became a candidate, but did not register as a candidate until March.² The Complaint also alleges
5 that Rotering was bound by the Act's reporting requirements, "which do not appear to have been
6 met."³ The Complaint notes that at the time Rotering announced her candidacy, a press account
7 reported that Rotering said she would have about \$400,000 in her "campaign war chest."⁴ The
8 Complainant acknowledges that Commission regulations permit individuals to delay registering
9 as a candidate after raising \$5,000 and engage in "testing the waters" activities to determine the
10 feasibility of a viable campaign, but alleges that the "testing the waters" exceptions did not apply
11 to Rotering because she was amassing \$400,000 in campaign funds that would be spent after she
12 declared her candidacy.⁵

13 In a joint response, Rotering and the Committee assert that there is no reason to believe
14 that they violated the Act as Complainant alleged: Rotering "tested the waters" for five weeks in
15 early 2015, decided to run on March 3, 2015, and timely filed her Statement of Candidacy.⁶
16 While Rotering tested the waters, Respondents assert, Rotering met with potential supporters,

¹ 2015 April Quarterly at 34, 49, 63, 103 (Apr. 15, 2015).

² Compl. at 1-2.

³ *Id.* at 1.

⁴ *Id.* at 2 and Exhibit A (Lynn Sweet, *Highland Park Mayor Nancy Rotering Joins 10th District Race Vs. Ex-Rep. Schneider*, CHICAGO SUN-TIMES, Mar. 16, 2015).

⁵ *Id.* at 2-3.

⁶ *Id.* at 1-2, 5.

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1 discussed the structure of a potential campaign, and asked people to contribute to the exploratory
2 committee, but was cautious in describing all activities as exploratory.⁷

3 Additionally, Respondents submitted an affidavit from the Committee's treasurer,
4 Michael Kreloff,⁸ who avers that during Rotering's "exploratory phase," there was no active
5 website, the bank account was named "Nancy Rotering Exploratory Committee" and
6 contribution checks were routinely made out to that entity, no blast e-mails were sent, and
7 written materials were clear that Rotering was only testing the waters.⁹ A flyer prepared by
8 Rotering's Exploratory Committee and contribution checks attached to the affidavit support
9 Kreloff's assertion.¹⁰ Kreloff further avers that expenditures were made for appropriate testing
10 the waters activities, such as polling, and meeting with potential supporters, strategists, and
11 contributors, and no news reports quoted Rotering as doing anything more than exploring a
12 campaign.¹¹

13 **B. Legal Analysis**
14

15 An individual becomes a candidate for federal office when he or she is deemed to have
16 decided to run for office and receives or has received contributions or makes or has made
17 expenditures in excess of \$5,000.¹² Funds that were raised or spent to "test the waters" apply to
18 the \$5,000 threshold for qualifying as a candidate, and the candidate must register with the

⁷ *Id.* at 1.

⁸ Kreloff is also serving as counsel to the Committee and the candidate. *See* Designation of Counsel forms dated August 6, 2015.

⁹ Response, Kreloff Aff. ¶¶ 5-9.

¹⁰ *Id.* Attach. B, D.

¹¹ *Id.* ¶¶ 10-11.

¹² 52 U.S.C. § 30102(2); 11 C.F.R. § 100.3(a).

1 Commission.¹³ After an individual reaches candidate status, all reportable amounts from the
2 beginning of the testing-the-waters period must be disclosed on the first financial disclosure
3 report filed by the candidate's committee, even if the funds were received or expended prior to
4 the current reporting period. The regulations define testing the waters activities as those activities
5 "conducted to determine whether an individual should become a candidate", and include, but are
6 not limited to, polling, telephone calls, and travel."¹⁴ Once an individual meets the \$5,000
7 threshold, he or she has fifteen days to designate a principal campaign committee by filing a
8 Statement of Candidacy.¹⁵ The principal campaign committee must then file a Statement of
9 Organization within 10 days of its designation,¹⁶ and must file disclosure reports with the
10 Commission in accordance with 52 U.S.C. § 30104(a) and (b).

11 Certain activities may indicate that the individual has decided to become a candidate and
12 is no longer "testing the waters." Commission regulations set out five non-exhaustive factors to
13 be considered in determining whether an individual has decided to become a candidate. An
14 individual indicates that he or she has gone beyond "testing the waters" and has decided to
15 become a candidate, for example, by (1) using general public political advertising to publicize
16 his or her intention to campaign for federal office; (2) raising funds in excess of what could
17 reasonably be expected to be used for exploratory activities or undertaking activity designed to
18 amass campaign funds that would be spent after he or she becomes a candidate; (3) making or

¹³ See 11 C.F.R. §§ 100.72(a), 100.131(a); see Factual and Legal Analysis at 8, MUR 6970 (DiCianni); Factual and Legal Analysis at 3, MUR 6533 (Perry Haney); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning).

¹⁴ 11 C.F.R. §§ 100.72(a), 100.131(a).

¹⁵ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

¹⁶ 52 U.S.C. § 30103(a).

1 authorizing written or oral statements that refer to him or her as a candidate for a particular
2 office; (4) conducting activities in close proximity to the election or over a protracted period of
3 time; or (5) taking action to qualify for the ballot under state law.¹⁷ These regulations seek to
4 draw a distinction between activities directed to an evaluation of the feasibility of one's
5 candidacy, as distinguished from conduct signifying that a private decision to become a
6 candidate has been made.¹⁸

7 The Complaint alleges that Rotering became a candidate when she raised \$5,000 in late
8 January 2015 but did not promptly file her Statement of Candidacy so she could amass \$400,000
9 in campaign funds that would be spent after she declared her candidacy. According to the
10 Committee's initial disclosure report, the 2015 April Quarterly Report, the Committee had raised
11 \$163,000 (plus the \$25,000 loan from the candidate) by March 3, 2015, when she decided to
12 run,¹⁹ and a total of \$247,180 before she filed her Statement of Candidacy on March 17, 2015.²⁰

13 In previous matters when the Commission has considered the "testing the waters"
14 exemption, it has viewed the amount of money raised as one factor to be considered in the
15 context of other facts before the Commission. See MUR 6224 (Fiorina); MUR 5930 (Schuring);
16 MUR 5703 (Rainville); and MUR 5661 (Butler). In this case, the amount of Respondents'
17 fundraising does not, when considered in light of the other facts before the Commission, suggest
18 candidate status for Rotering earlier than March 2015.

¹⁷ 11 C.F.R. §§ 100.72(b), 100.131(b).

¹⁸ See Advisory Op. 1981-32 (Askew).

¹⁹ The Response states that excluding Rotering's personal funds, the Committee raised \$166,843 prior to Rotering's announcement that she was a candidate. See Response at 5 and Kreloff Aff. ¶ 12.

²⁰ On September 9, 2015, the Committee filed an amended 2015 April Quarterly Report, but there is no change to the amount of contributions raised prior to March 17, 2015.

1 The available information does not suggest that Rotering went beyond “testing the
2 waters” by her other actions, for example, by making or authorizing statements indicating she
3 was a candidate, or conducting “testing the waters” activities over a protracted period of time or
4 in close proximity to the election; her asserted testing the waters period lasted 33 days and took
5 place over a year before the 2016 primary election.²¹

6 Because the available information does not indicate that Rotering untimely filed her
7 Statement of Candidacy, the Commission finds that there is no reason to believe that Nancy
8 Rotering violated 52 U.S.C. § 30102(e)(1). And the Committee filed its Statement of
9 Organization on the same day that Rotering filed her Statement of Candidacy, so the
10 Committee’s statement was also timely.

11 Accordingly, the Commission finds that there is no reason to believe that the Committee
12 violated 52 U.S.C. § 30103(a). Finally, because the Committee timely filed its initial disclosure
13 report, the 2015 April Quarterly Report, and disclosed contributions accepted and disbursements
14 made prior to Rotering’s status as a candidate,²² the Commission finds that there is no reason to
15 believe that the Committee violated 52 U.S.C. §§ 30104(a) or (b).

²¹ See 11 C.F.R. §§ 100.72(b)(3), (b)(4), 100.131(b)(3), (b)(4).

²² See 11 C.F.R. §§ 101.3, 104.3(a), 104.3(b).